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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHAN LEE PARADA,

Defendant and Appellant.

B234974

(Los Angeles County  
Super. Ct. No. LA065886)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael K. Kellogg, Judge. Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and David F. Glassman, Deputy Attorney General, for Plaintiff and Respondent.

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**Defendant Nathan Lee Parada appeals from the judgment entered following a jury trial in which he was convicted of attempted burglary. Defendant contends insufficient evidence supports the verdict. We affirm.**

### **BACKGROUND**

About 6:00 a.m. on August 24, 2010, Cy Waits was awakened by a loud banging noise. He awakened his girlfriend, Paris Hilton, who owned the house, which is located in a gated, guarded private community in Los Angeles County. Hilton testified she heard about nine “loud banging and thumping noises against the window downstairs.” Waits and Hilton went downstairs to investigate. Hilton saw defendant standing in the backyard near a window, looking at her and smiling. Waits, who was carrying a gun, went outside and asked defendant who he was and what he was doing in the backyard. Defendant began walking away. Waits shouted at defendant, who turned and smirked at him. Waits noticed that defendant was holding a knife in each hand. Waits aimed the gun at defendant and ordered him to drop the knives. Eventually defendant dropped his knives and complied with Waits’s command to lie on the ground. Waits guarded defendant until the police arrived and arrested defendant.

Defendant waived his rights to silence and counsel and spoke to detectives. The prosecutor played a DVD of defendant’s interrogation at trial. Defendant told the detectives that he left his home in Redlands several days earlier, took a series of buses to downtown Los Angeles, then walked to Hollywood and Beverly Hills. Somewhere along the way, he purchased two knives, one of which included a metal glass-breaking tool. He also purchased a “star map” on Sunset Boulevard that showed him the location of Hilton’s home. He was “a big fan” of Hilton and thought it would be interesting and fun to go to her house and break in. His goal was not to meet Hilton, but to take money and perhaps jewelry that he could pawn or sell. He explained that he chose her home because she was attractive and wealthy and he “just wanted to see what [he] could take.”

Defendant told the police he “snuck” into the gated community through “the forest” and found Hilton’s house. He “camped out” “kind of on the side” of the house for

several hours “waiting on a good time” to break in. During that time, he saw someone arrive and drive into the garage early in the morning. Eventually he went to the back of the house, where he intended to break a window and enter the house. He struck the window “a few times” with the glass-breaking tool on his knife to attempt to break it. Then a man came out with a gun so he dropped his knives and got on the ground when the man told him to do so.

A detective testified that he looked at the window defendant had reportedly hit and saw no scratches or other damage.

The jury convicted defendant of attempted burglary. The court sentenced defendant to two years in prison.

## **DISCUSSION**

A person commits first degree burglary when he enters an inhabited dwelling with the specific intent to commit grand or petit larceny or any felony inside it. (Pen. Code, §§ 459, 460, subd. (a).)

An attempt to commit a crime occurs when the perpetrator, with the specific intent to commit the crime, performs a direct but ineffectual act toward its commission. (Pen. Code, § 21a; *People v. Medina* (2007) 41 Cal.4th 685, 694.) Mere antecedent preparations, such as planning the crime and arranging the means or measures to commit it, are insufficient to constitute the required direct, ineffectual act. (*People v. Memro* (1985) 38 Cal.3d 658, 698, overruled on another point in *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2.) To constitute an attempt, the acts ““must go so far that they would result in the accomplishment of the crime unless frustrated by extraneous circumstances.”” (*Memro*, at p. 698.) A defendant need not actually commit an element of the underlying offense to be guilty of an attempt to commit that offense. (*Medina*, at p. 694.)

Accordingly, “for the prosecution to prove that defendant committed an attempt to burglarize as proscribed by Penal Code section 664, it was required to establish that he

had the specific intent to commit a burglary of the [house] and that his acts toward that goal went beyond mere preparation.” (*People v. Staples* (1970) 6 Cal.App.3d 61, 64.)

Here, the trial court gave standard pattern jury instructions on attempt to commit a crime,<sup>1</sup> but it modified the standard burglary instruction by inserting “attempts” and “attempted” throughout. The court’s written instructions given to the jury thus stated, “Every person who attempts enters [*sic*] any building with the specific intent to steal, take, and carry away the personal property of another of any value and with the further specific intent to deprive the owner permanently of that property or with the specific intent to commit or [*sic*], a felony is guilty of the crime of burglary in violation of Penal Code section 459.” When it read this portion of the instruction to the jury, the court omitted the word “attempts.” It then stated, “You have to read these in context of those previous instructions that I gave. This is defining what burglary is. I just defined to you what attempt is.” The further portion of the court’s written instruction explaining an entry stated, “A person attempts enters [*sic*] a building if some part of his her body or

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<sup>1</sup> The trial court instructed as follows: “An attempt to commit a crime consists of two elements, namely, a specific intent to commit the crime, and a direct but ineffectual act done toward its commission. [¶] In determining whether this act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. However, acts of a person who intends to commit a crime will constitute an attempt where those acts clearly indicate a certain, unambiguous intent to commit that specific crime. These acts must be an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some circumstance not intended in the original design. [¶] A person, who has once committed acts which constitute an attempt to commit a crime, is liable for the crime of attempted burglary even though he she does not proceed further with the intent to commit the crime, either by reason of voluntarily abandoning his her purpose or because he she was prevented or interfered with in completing the crime. [¶] If a person intends to commit a crime but, before committing any act toward the ultimate commission of the crime, freely and voluntarily abandons the original intent and makes no effort to accomplish it, that person has not attempted to commit the crime.” (CALCRIM Nos. 6.00, 6.01, 6.02.)

some object under his her control attempts to penetrates [*sic*] the area inside the building's outer limits.” The written instructions then reiterated the elements as follows: “1. A person attempted to entered [*sic*] a building; and [¶] 2. At the time of the attempted entry, that person had the specific intent to steal and take away someone else's property, and intended to deprive the owner permanently of that property.”

The trial court thus misinstructed the jury that attempted burglary required an attempted entry. While an attempted burglary requires the specific intent to enter a structure and to commit a felony or theft therein, the direct, ineffectual acts toward accomplishing that intent need not reach the point of an *attempted entry* to establish criminal liability.

Defendant does not contend that the erroneous instruction is a ground for reversal. Notably, the trial court's instructional error did not reduce the prosecutor's burden of proof, but in fact increased it. Defendant instead contends that, although “[t]here is perhaps . . . little question that a conviction would have been valid had the jury been properly instructed on the actual elements of burglary and the actual law of attempt,” the evidence was insufficient to support his conviction of attempted burglary as defined by the trial court's erroneous instructions.

To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable jury could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.)

Appellate review for sufficiency of evidence stems from the due process requirement of proof beyond a reasonable doubt of every *element of the crime of which a defendant was convicted*. “[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute *the crime with which he is charged*.” (*In re Winship* (1970) 397 U.S. 358, 364 [90 S.Ct. 1068], italics added.) “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could

have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 319 [99 S.Ct. 2781].) Accordingly, we analyze whether substantial evidence established the actual elements of the crime of which defendant was convicted, not the trial court’s erroneous definition.

Here, defendant’s statements to the police and the testimony of Hilton and Waits regarding defendant’s conduct constituted substantial evidence of attempted burglary. Defendant admitted that he intended to break into Hilton’s house and steal money and jewelry. He was armed with two knives, one of which had a glass-breaking tool that defendant admitted he intended to use, and in fact used, to attempt to break one of the windows in Hilton’s house. Defendant further admitted that he used a “star map” to locate Hilton’s home, evaded the neighborhood’s guarded gate by entering through “the forest,” and “camped out” alongside Hilton’s house, “waiting on a good time” to break in. Then he struck the window repeatedly—more than nine times, according to Hilton—with his glass-breaking tool, admittedly with the intent to break into the house so he could enter and steal. Defendant thus admitted his specific intent to commit a burglary and his conduct and admissions established more than sufficient direct but ineffectual acts toward the commission of a burglary. Substantial evidence thus supports defendant’s conviction.

#### **DISPOSITION**

The judgment is affirmed.

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MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.